LIBRARY
SUPREME COURT, U. S.

Supreme Court, U.S.
FILED
OCT 12 1971
E. ROBERT SEAVER, CLERK

No. 71-546

In the Supreme Court of the United States

OCTOBER TERM, 1971

LOS ANGELES NEWSPAPER GUILD, LOCAL 69, ET AL.,
PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

PETER G. NASH,
General Counsel,
NORTON J. COME,
Assistant General Counsel,
LINDA SHER,
Attorney, National Labor Relations Board,
Washington, D.C. 20570.

In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-546

LOS ANGELES NEWSPAPER GUILD, LOCAL 69, ET AL.,

PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The *per curiam* opinion of the court of appeals (Pet. App 11) is reported at 443 F. 2d 1173.[1] The Board's decision and order (Pet. App. 12-29)[2] are reported at 185 NLRB No. 25.

[1] An earlier opinion of the court of appeals, affirming a temporary injunction which had been obtained under Section 10 (l) of the National Labor Relations Act, 29 U.S.C. 160(l), is reported at 412 F. 2d 541.

[2] The decision of the Trial Examiner is not included in the appendix to the petition; it is printed in the Volume of Pleadings in the court below, referred to herein as "R."

449-824--71

JURISDICTION

The judgment of the court of appeals (Pet. App. 1–5) was entered on July 21, 1971. The petition for a writ of certiorari was filed on October 18, 1971. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the National Labor Relations Board properly found that the Los Angeles Herald-Examiner and the San Francisco Examiner, though divisions of Hearst Corporation, operated sufficiently independent of each other and of the corporation to constitute separate "persons" for purposes of Section 8(b)(4)(B), the secondary boycott provision, of the National Labor Relations Act.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*), are set forth at Pet. 3–5.

STATEMENT

On December 15, 1967, during the course of a labor dispute, eight Los Angeles unions struck the Los Angeles Herald-Examiner, a division of Hearst Corporation (Pet. App. 13–14). On January 5, 1968, in furtherance of the strike, the Los Angeles unions picketed the San Francisco Examiner, a separate division of Hearst, the San Francisco Chronicle, and the

San Francisco Printing Company[3] (Pet. App. 14; Tr. 55–57, 160, 163).[4]

The Los Angeles unions requested support from two San Francisco unions which, in turn, asked their members, who were employees of the Printing Company, to honor the picket lines. Their members complied, causing a work stoppage at the Printing Company which resulted in suspension of publication of the San Francisco Examiner and the Chronicle (Pet. App. 14).

The newspapers then initiated an unfair labor practice proceeding. Following a hearing, the Board concluded that, by picketing the San Francisco Examiner, the Chronicle, and the Printing Company, with which they had no dispute, the Los Angeles unions violated Section 8(b)(4)(B) of the Act. It also concluded that the San Francisco unions violated Section 8(b)(4)(B) by inducing the employees of the Printing Company to strike in support of the Los Angeles unions' dispute with the Herald-Examiner (Pet. App. 20–21). Essential to its determination that the pressure exerted against the San Francisco Examiner was secondary, and thus unlawful, was the Board's finding

---

[3] The Printing Company is a joint venture of Hearst and the Chronicle which performs a variety of non-editorial functions for them in connection with the publication of their newspapers—such as printing, distribution, accounting, collection of revenue, advertising, and the processing of subscriptions (R. 82).

[4] "Tr." refers to the transcript of the hearings before the Board, which is included in Volume II of the record in the court of appeals.

that the Los Angeles Herald-Examiner and the San Francisco Examiner are separate "persons" within the meaning of Section 8(b)(4)(B) of the Act (Pet. App 15–20).[5] The evidence relevant to this finding is as follows:

The Hearst Corporation, a conglomerate consisting of 31 incorporated subsidiaries and 20 unincorporated divisions, contains diversified enterprises ranging from operation of ranches and timberland to publication of newspapers and magazines (Pet App. 16, n. 6). The chief executive of Hearst is its president, Richard Berlin, whose responsibilities include the appointment of all divisional heads; these appointees are given the title of "Publisher" when they direct a newspaper division (R. 81). The chairman of Hearst's board of directors is William Randolph Hearst, Jr., the son of the founder of the Hearst newspaper chain; he chairs an "Editorial Board" which prepares editorials and feature stories (R. 81–82).

The Los Angeles Herald-Examiner and the San Francisco Examiner, newspaper divisions of Hearst, operate independently of each other and of the parent corporation. Thus, each Publisher, together with the staff he selects, bears exclusive responsibility for the daily operations of his newspaper (Pet. App. 16; Tr. 230, 903–905, 1071). The Publisher determines the size of his newspaper's workforce, the salaries of his subordinates, and has sole responsibility in deciding whom to hire, promote, and fire (Pet. App. 16; Tr. 845–846, 1092–1094). His autonomy extends to the

[5] Petitioners do not here contest the unfair labor practice findings relating to the Chronicle and the Printing Company.

formulation of editorial policy, as well as determining policy and rates with respect to labor relations, advertising and circulation (Pet. App. 16–17; Tr. 846–848, 230, 1087–1089, 1096–1097, 862–864, 902, 1115).[6] For example, George Hearst, Jr., the Publisher of the Herald-Examiner, in consultation with his staff, and without participation by Hearst executives, negotiates and executes all collective bargaining agreements with the unions representing his employees (Tr. 847–849).

The Herald-Examiner and the San Francisco Examiner do not have the same labor policies; the former establishes its labor policy independent of any bargaining association, while the latter is bound by the policies of the multi-employer bargaining association of which it is a member (Tr. 1062–1068, 1134–1135). There is no interchange of employees between the two newspaper divisions, neither performs any work for the other (Pet. App. 16–17; R. 84; Tr. 274, 295–298, 869), and they each use different printing firms (R. 84; Tr. 432–433, 852, 855, 860, 865, 1099).

Moreover, each division maintains its own financial records and accounting system, subject only to uniform reporting requirements imposed by Hearst for tax purposes, and to apprising Hearst of its financial condition (Pet. App. 17; R. 85; Tr. 1167, 1169). Each maintains separate payrolls and bank accounts (R. 84). Each division determines for itself how large a

[6] The Publisher and his staff also decide with whom the division will do business on a daily basis, whether or not to use the services of other Hearst enterprises, including the Editorial Board, and whether and from whom to purchase equipment, supplies, features, and services (Pet. App. 17; R. 84; Tr. 859–862, 872–874, 883, 893–894, 957, 1110).

working cash balance it will maintain,[7] treating the surplus over working capital as operating profits which are periodically remitted to the Hearst home office (R. 85; Tr. 1176–1178).

Although the separate divisions may incur operating expenses in any amount without consulting Hearst (Tr. 1074), it is their practice to submit for approval—to either the Hearst Board of Directors or its Financial Committee—all capital expenditures in excess of $10,000 (R. 85; Tr. 1045–1048, 1180–1188). However, these expenditure requests have, without exception, been approved by the Board of Directors (Pet. App. 17; Tr. 1238, 1241–1242, 1441–1442). Indeed, without any modification of such requests, the San Francisco Examiner and Herald-Examiner have sought and obtained millions of dollars for capital expenditures in recent years, including more than a million dollars for the construction of a new plant for the San Francisco Examiner (R. 86; Tr. 1043–1045, 1072–1074, 1187–1188).

On the basis of these facts, the Board found that Hearst "does not exercise actual, or active control over these divisions [the San Francisco Examiner and the Herald-Examiner] which operate independently of the Corporation and each other as separate autonomous newspaper enterprises" (Pet. App. 17). It noted that it has held, with court approval, that "separate corporate subsidiaries are separate persons, each en-

[7] With such working capital, each division pays local creditors with its own checks (Tr. 1070), and pays local taxes as a separate entity (Tr. 1080, 1082).

titled to the protection of Section 8(b)(4)(B) from the labor disputes of the other, if neither the subsidiaries nor the parent exercises actual or active, as opposed to merely potential, control over the day-to-day operations or labor relations of the other" (Pet. App. 16). The Board (with one member dissenting) concluded that the same principle was applicable here; for, to deprive the two newspapers "of the protection of the statute on the technical ground that they are merely divisions of the Corporation," rather than corporate subsidiaries, "would exalt form over substance, a result which we are convinced is not required by the statute" (Pet. App. 17–18). It therefore ordered the unions to cease their unfair labor practice activity, and to post appropriate notices (Pet. App. 23–26).

The court of appeals, in a *per curiam* opinion, enforced the Board's order (Pet. App. 11).

ARGUMENT

Section 8(b)(4)(B) of the National Labor Relations Act makes it an unfair labor practice for a union to exert strike pressure for an object of "forcing or requiring any person * * * to cease doing business with any other person" (Pet. 4). The unions, in furtherance of a dispute with the Los Angeles Herald-Examiner, exerted pressure on the San Francisco Examiner. Had the Herald-Examiner and the San Francisco Examiner been separate corporate subsidiaries of Hearst, they would be entitled to be treated as separate persons for purposes of Section

8(b)(4)(B).[8] To reach a contrary conclusion in this case on the ground that we deal here with separate and autonomous divisions rather than separate subsidiary corporations, is, as the Board concluded, to exalt form over substance, without in any way furthering the purposes underlying Section 8(b)(4)(B). The decision below, sustaining the Board's position, is correct and is not in conflict with that of any other court of appeals; there is thus no cause for review by this court.[9]

---

[8] The "Board and the courts have consistently and repeatedly held that common ownership alone does not suffice [to remove the protective shield of Section 8(b)(4)(B)]. There must be something more in the form of common control, as it is usually phrased, denoting an actual, as distinct from merely a potential, integration of operations and management policies. Two business enterprises, although commonly owned, do not for that reason alone become so allied with each other as to lift the congressional ban upon the extension of labor strife from the one to the other." *Miami Newspaper Printing Pressmen's Local No. 46* v. *National Labor Relations Board* (*Knight Newspapers, Inc.*), 322 F. 2d 405, 408–409 (C.A. D.C.). Accord: *J. G. Roy & Sons Co.* v. *National Labor Relations Board*, 251 F. 2d. 771, 773–774 (C.A. 1); *Bachman Machine Co.* v. *National Labor Relations Board*, 266 F. 2d 599, 605 (C.A. 8); *Drivers, Chauffeurs and Helpers Local 639, etc.* (*Poole's Warehousing, Inc.*), 158 NLRB 1281, 1285–1286.

[9] Petitioners' additional contention (Pet. 15) that "the facts of this case * * * preclude a finding * * * that the Examiner is a wholly unconcerned neutral * * *" raises only an evidentiary issue, which likewise does not warrant review by this Court.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

PETER G. NASH,
General Counsel,
NORTON J. COME,
Assistant General Counsel,
LINDA SHER,
Attorney,
National Labor Relations Board.

NOVEMBER 1971.

U.S. GOVERNMENT PRINTING OFFICE: 1971